

August 25, 2015

## LEGISLATIVE COMMITTEE REPORT

A Legislative Committee meeting was held on Tuesday, August 25, 2015 at 6:00 p.m. in the County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas.

Committee Members Present: K. Harrison, Easley (arrived late), J. Harrison, Sandlin, Chiocco, Slinkard, Meyers (arrived late), Anglin

Others Present: County Clerk Tena O'Brien, Administrator of General Services John Sudduth, Building Official of Building Safety Division Glenn Tracy, Building Division Coordinator Audry Gresham, James Gately with ABLE Association of Beaver Lake Environment, Real Estate Agent Larry Kelly, President/Executive Director of Ozarks Water Watch Dave Caseletto, Health Inspector Caroline Eastman of the Arkansas Department of Health

JP K. Harrison called the meeting to order at 6:00 p.m.

### Public Comments

None

### 1. Amendment to the Vehicle Policy

JP K. Harrison presented a suggested amendment to the Benton County vehicle policy.

County Clerk Tena O'Brien read the current Benton County vehicle policy. It states that: 'No county official or employee may use the county vehicle for his or her own personal use. This excludes vehicles assigned to elected officials as a benefit of their office. The use of a county vehicle by county employees to be driven to their home at the end of their work shift will be allowed by the elected official only. The use of this vehicle after hours will be if an employee could be called out for an emergency or county business. The use of vehicle after hours must log time used and nature of call out or business trip. County vehicles are for county business use only; no non-county employee may use or be a passenger in vehicle without permission from elected official.'

She also read JP K. Harrison's suggested amendment to the Benton County vehicle policy. This amendment removes a second line of the current policy which states that: 'The *Benton County Vehicle Operation Policy* is a separate document that all employees using any county vehicle, truck, tractor, or equipment must sign off on prior to employment with the county.' The proposed amendment adds the following: "Employees who face the possibility of being called to work for emergencies are present at all times, may take a County vehicle home. Employees whose home location provides an opportunity to visit work sites, to and from work, (i.e. environmental officers, building inspectors, etc.) may be allowed to take a vehicle home. In addition, employees who will be leaving from home to attend a conference may be allowed to take a County vehicle home. If an employee is on extended leave or vacation, his/her County vehicle will be turned in to the appropriate elected official until their return. Personal use of a County

vehicle is prohibited with the exception of stops to and from work. Under no circumstances may the County vehicle be used to transport alcohol, unless confiscated for purposes of evidence of a crime. All passengers must have a signed letter on file, in the County Properties Office, documenting that they have been informed of the County's tort immunity and the \$5,000 maximum coverage for injuries.'

JP K. Harrison stated that there is an ordinance that refers back to the vehicle policy but that there is nothing about the vehicle policy in the policy manual. This was discussed.

JP J. Harrison made a motion to move to the Committee of the Whole for discussion, motion seconded by JP Sandlin.

Motion passed by unanimous show of hands vote (1 absent).

JP Chiocco requested to see each individual elected official's internal policies concerning vehicles.

- 2. Proposed Ordinance Adopting the Arkansas Fire Prevention Code, 2012 Edition (Three Volumes, Fire, Building & Residential) by Reference.**
- 3. Proposed Ordinance Adopting the National Electric Code, 2014 Edition by Reference.**
- 4. Proposed Ordinance Adopting the Arkansas Energy Code, 2014 Edition by Reference.**
- 5. Proposed Ordinance Adopting the Arkansas Fuel Gas Code, 2006 Edition by Reference.**
- 6. Proposed Ordinance Adopting the Arkansas Mechanical Code, 2010 Edition by Reference.**
- 7. Proposed Ordinance Adopting the Arkansas Plumbing Code, 2006 Edition by Reference.**

Administrator of General Services John Sudduth introduced Glenn Tracy and Audry Gresham who are with the Benton County Development Department/Building Safety Division. He stated that they are asking to update the current ordinances that regulate construction inside the unincorporated areas of Benton County government to match the bare minimum codes that the state enforces. This was discussed.

JP Sandlin made a motion to approve these proposed ordinances in their entirety and move to the Committee of the Whole, motion seconded by JP Chiocco.

Motion passed by show of hands vote: 6 for, 1 against (JP Easley), 1 absent

- 8. Proposed Ordinance Requiring the Owner of Any Property, Not Connected to a Public Sewer System, Prior to any Transfer of Title, to Have an Inspection Done of any Onsite Wastewater Treatment System or for Approval of a New System by an Arkansas Licensed Designated Representative or by a Septic System Installer Approved by the Benton County Unit of the Arkansas Department of Health on a Form Approved by and Reviewed by the Benton County Unit of the Arkansas Department of Health.**

Public Comments: None

Administrator of General Services John Sudduth explained that several people worked on this ordinance including James Gately, Larry Kelly and others. James Gately introduced Caroline Eastman from the Arkansas Department of Health, Larry Kelly and Dave Caseletto and then gave a short presentation about the ordinance and why it is important. He explained that there were a number of land use committees formed by various county judges to achieve a broad background of people to answer the question of what is the vision for the county. It took about eight years to go through the process and finally bring it to the Quorum Court; it was called the Land Use Guidelines. People had plans for development and they did not know what the process was and who to go to. Another part of the discussion was the concern about wastewater treatment and septic tanks. He stated that many homeowners don't maintain their onsite wastewater systems properly and the life of these systems is dependent on how well they are cared for. They can become a public health issue if they are not maintained properly. He explained that Karst is a geological term and it means that most of Benton County sits on limestone that eventually erodes. Things that are on the surface, if they enter into the groundwater or the sub-surfaces, it is unknown where they may end up. There is no mechanism right now that requires inspections. There are certain loans where this is a requirement but the requirements have not been standardized. He showed a map of the septic tanks in the county and explained that it is not accurate, that there are even more than shown on the map. The Karst is throughout the county. He gave examples of well contaminations from the past. The department of Natural Resources says there are 19 active community wells in the county. There are around 3,000 private wells that could possibly be contaminated. This is a serious potential problem. He then presented slides to illustrate this point.

JP Meyers arrived at the meeting.

Larry Kelly, a local real estate broker, believes that the environment needs to be protected. He explained that in 1977 the county started requiring septic permits. Until 1995, properties that were 10 acres or more did not require a permit. Some of these farms eventually became subdivisions so the septic lines are not necessarily on their property that they have remaining. In order to protect the public, it is necessary to locate these septic lines and the logical time to do it is before it transfers title. Many people worked on this committee to develop this ordinance to protect the public. When someone sells their property, it is necessary that a septic inspection be done. Part of this ordinance creates a situation where the health department can train people to make the septic inspection. He cited many examples (some of his own properties) where properties were sold that didn't even have septic systems on their properties because no one knew where they were located. Washington County has had a similar ordinance since 2003 but it is not as meaty. The proposed Benton County one is very logical and it is budget neutral. It does not cost the county anything. It is going to cost the seller and the buyer (they can negotiate the cost) but it is estimated it will cost somewhere around \$350-\$450. This ordinance provides for people who don't use a real estate agent. Larry Kelly said that there has been no negative feedback from the Board of Realtors about this ordinance because there is already one in Washington County.

JP Slinkard asked who initiates the process of the septic inspections.

Larry Kelly explained that it should happen whenever that party goes under contract. The owner should know about these things before the property is put on the market. If the seller does not get

proactive about it, the realtor would need to ask for the septic inspection form as they currently do with the seller property disclosure.

JP Sandlin stated that several years ago, she would report something to the health department at the property owner's request and she had explained to her each time that they would love to be able to do something but there was nothing under state code that forced something to be repaired.

Carolyn Eastman stated that, if they get a complaint, they have to go out and verify that there is an issue and then they get a 30 day requirement to fix it, after that they get another warning, and after that warning it goes to the prosecuting attorney. Sometimes the owners have no money to repair it. She stated that there are a lot of difficult cases.

JP Sandlin asked if there is anyone checking septic systems around the lake. Carolyn Eastman stated that there is no inspection requirement to go back and check existing systems.

David Caseleto with Ozark Water Watch stated that for about five years he served on a committee to pass an ordinance in Stone County, Missouri which has similar problems to our area. They realized that they had no way to inspect and find out if there are failing properties around the lake. They determined that they could start doing it when the property sells. This has been very successful because people now fix their septic systems before they sell the house because they know this ordinance is in effect. It has to be in failure to initiate a repair.

JP J. Harrison asked if the county has anything in place like the 'Call Before You Dig' program for septic systems wherein they would have to be marked before a person can dig there. Administrator of General Services John Sudduth said there is nothing in place. This was discussed.

JP Easley asked if there could be a way to follow the inspection process without holding up the real estate transaction to serve the seller, the buyer, their transaction and also the county.

Larry Kelly said there is a city ordinance in Bella Vista that says that if the house is within 200 feet of the public sewer, you must connect to it within 90 days. Nine times out of ten, the seller will be responsible for paying the \$6,500 bill for this but the seller says that they will do it within the 90 days after the sale so they have more money. In the past, they put some money in escrow but under the new guidelines for loans, no one escrows anything. What the city set up, doesn't work in reality because there is nothing that guarantees that repair once the paper is signed. He stated that septic systems are actually evaporation systems and they work quite well if they are not abused. But modern lifestyles often cause them to fail.

Caroline Eastman from the Arkansas Department of Health, who works in the onsite Wastewater Program and has been in the septic program for eleven years, stated that many new homes are built with septic systems and the owners don't know how to properly maintain their systems. She stated there are 25,000 permits currently on file and there are thousands or more that are unknown. There is no standardized inspection in place. They would like to improve upon Washington County's ordinance to add guidelines for inspection.

JP K. Harrison said that the state is going to have to adopt something because there are many areas that don't have to abide by this ordinance because they are incorporated.

Caroline Eastman said that it is a county ordinance so it does not include the incorporated areas but they are hoping that the cities will adopt it too. The rest of the state is not experiencing the same amount of growth and Benton County influences the rest of the state.

JP Slinkard asked if a person decides to sell their property, does the health department have a list of those inspectors and how the marketing part of the requirements or the guidelines will be put out there to the public. Caroline Eastman stated that they will be able to provide a list of inspectors available to give to the public. She said that in Arkansas there are people licensed to design septic system and install septic systems but there is no licensing for inspecting septic systems. So to become qualified to inspect a septic system, one of these people would take a course in septic system inspection and become certified by the county to inspect these systems.

JP Meyers inquired about the definition of a failing system. Larry Kelly stated that a failing system is defined as an onsite wastewater treatment system which does not function properly that includes one of the following deficiencies: 1) surfacing sewage, 2) sewage being discharged directly into the ground or into the water, 3) sewage backing up into the home, 4) a collapsed septic tank, 5) a tank with no lid or an open lid, 6) a non-watertight or leaking septic tank, 7) or a pump or other components not working at the inspector's discretion or determination. JP Meyers then asked about penalties for violation. Larry Kelly stated that this would be determined by the court system. This was discussed. New septic tank installation laws were then discussed by the committee. JP K. Harrison stated that there should be a diagram on the inspection report on where the drain field is for historical records and this was discussed. JP Chiocco inquired about the \$250 daily penalty timeframe included in the article. Larry Kelly stated that the questions about the article should be directed to the county attorney. John Sudduth stated that there is a typo in Article 8 that needs to be amended before this moves to the Committee of the Whole. It currently says that 'in the event any portion of the Amendment to the Planning and Development Ordinance of Benton County July 2014' and this needs to be changed because it is a typo and it has nothing to do with the Planning and Development ordinance. It needs to be changed to 'in the event any portion of this ordinance is declared unconstitutional or otherwise invalid by any court, the remaining unaffected provisions shall remain effective.' This is standard legal phraseology that is always in an ordinance.

JP Slinkard made a motion to send this amended ordinance to the Committee of the Whole, motion seconded by JP Chiocco.

Motion passed by show of hands vote: 7 for, 1 against (JP Meyers)

JP K. Harrison announced the next Committee of the Whole meeting for September 8<sup>th</sup>, 2015.

Meeting adjourned at 8:00 p.m.